

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2711

Introduced by Assembly Member Muratsuchi

February 21, 2014

~~An act to amend Section 1050 of the Penal Code, relating to criminal procedure. An act to add Section 25525.5 to the Public Resources Code, relating to energy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2711, as amended, Muratsuchi. ~~Criminal procedure: trials: continuances. Energy: thermal powerplants: certification: sea level rise.~~

Existing law vests the State Energy Resources Conservation and Development Commission with the exclusive jurisdiction to certify sites for thermal powerplants with a generation capacity of 50 or more megawatts and related facilities. Existing law requires the commission to make certain findings before issuing a certification for the site.

This bill would require the commission to consider, during the certification process, the effects of sea level rise in the context of protecting the proposed site and related facility from damage caused by sea level rise.

~~Existing law authorizes a party to a criminal proceeding to move for a continuance upon a showing of good cause. Existing law describes "good cause" for purposes of that provision.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25525.5 is added to the Public Resources
2 Code, to read:

3 25525.5. In the issuance of a certification pursuant to this
4 chapter, the commission shall consider the effects of sea level rise
5 in the context of protecting the proposed site and related facility
6 from potential damage caused by sea level rise, such as storm
7 surges and flooding. In assessing the sea level rise, the commission
8 may rely on floodplain maps published by the Department of Water
9 Resources.

10 ~~SECTION 1. Section 1050 of the Penal Code is amended to~~
11 ~~read:~~

12 ~~1050. (a) The welfare of the people of the State of California~~
13 ~~requires that all proceedings in criminal cases shall be set for trial~~
14 ~~and heard and determined at the earliest possible time. To this end,~~
15 ~~the Legislature finds that the criminal courts are becoming~~
16 ~~increasingly congested with resulting adverse consequences to the~~
17 ~~welfare of the people and the defendant. Excessive continuances~~
18 ~~contribute substantially to this congestion and cause substantial~~
19 ~~hardship to victims and other witnesses. Continuances also lead~~
20 ~~to longer periods of presentence confinement for those defendants~~
21 ~~in custody and the concomitant overcrowding and increased~~
22 ~~expenses of local jails. It is therefore recognized that the people,~~
23 ~~the defendant, and the victims and other witnesses have the right~~
24 ~~to an expeditious disposition, and to that end it shall be the duty~~
25 ~~of all courts and judicial officers and of all counsel, both for the~~
26 ~~prosecution and the defense, to expedite these proceedings to the~~
27 ~~greatest degree that is consistent with the ends of justice. In~~
28 ~~accordance with this policy, criminal cases shall be given~~
29 ~~precedence over, and set for trial and heard without regard to the~~
30 ~~pendency of, any civil matters or proceedings. In further accordance~~
31 ~~with this policy, death penalty cases in which both the prosecution~~
32 ~~and the defense have informed the court that they are prepared to~~
33 ~~proceed to trial shall be given precedence over, and set for trial~~
34 ~~and heard without regard to the pendency of, other criminal cases~~
35 ~~and any civil matters or proceedings, unless the court finds in the~~
36 ~~interest of justice that it is not appropriate.~~

37 ~~(b) To continue any hearing in a criminal proceeding, including~~
38 ~~the trial, (1) a written notice shall be filed and served on all parties~~

1 to the proceeding at least two court days before the hearing sought
2 to be continued, together with affidavits or declarations detailing
3 specific facts showing that a continuance is necessary and (2)
4 within two court days of learning that he or she has a conflict in
5 the scheduling of any court hearing, including a trial, an attorney
6 shall notify the calendar clerk of each court involved, in writing,
7 indicating which hearing was set first. A party shall not be deemed
8 to have been served within the meaning of this section until that
9 party actually has received a copy of the documents to be served,
10 unless the party, after receiving actual notice of the request for
11 continuance, waives the right to have the documents served in a
12 timely manner. Regardless of the proponent of the motion, the
13 prosecuting attorney shall notify the people's witnesses and the
14 defense attorney shall notify the defense's witnesses of the notice
15 of motion, the date of the hearing, and the witnesses' right to be
16 heard by the court.

17 (e) Notwithstanding subdivision (b), a party may make a motion
18 for a continuance without complying with the requirements of that
19 subdivision. However, unless the moving party shows good cause
20 for the failure to comply with those requirements, the court may
21 impose sanctions as provided in Section 1050.5.

22 (d) When a party makes a motion for a continuance without
23 complying with the requirements of subdivision (b), the court shall
24 hold a hearing on whether there is good cause for the failure to
25 comply with those requirements. At the conclusion of the hearing,
26 the court shall make a finding whether good cause has been shown
27 and, if it finds that there is good cause, shall state on the record
28 the facts proved that justify its finding. A statement of the finding
29 and a statement of facts proved shall be entered in the minutes. If
30 the moving party is unable to show good cause for the failure to
31 give notice, the motion for continuance shall not be granted.

32 (e) Continuances shall be granted only upon a showing of good
33 cause. Neither the convenience of the parties nor a stipulation of
34 the parties is in and of itself good cause.

35 (f) At the conclusion of the motion for continuance, the court
36 shall make a finding whether good cause has been shown and, if
37 it finds that there is good cause, shall state on the record the facts
38 proved that justify its finding. A statement of facts proved shall
39 be entered in the minutes.

~~(g) (1) When deciding whether good cause for a continuance has been shown, the court shall consider the general convenience and prior commitments of all witnesses, including peace officers. Both the general convenience and prior commitments of each witness also shall be considered in selecting a continuance date if the motion is granted. The facts as to inconvenience or prior commitments may be offered by the witness or by a party to the case.~~

~~(2) For purposes of this section, “good cause” includes, but is not limited to, those cases involving murder, as defined in subdivision (a) of Section 187, allegations that stalking, as described in Section 646.9, a violation of one or more of the sections specified in subdivision (a) of Section 11165.1 or Section 11165.6, domestic violence as defined in Section 13700, a case being handled in the Career Criminal Prosecution Program pursuant to Sections 999b through 999h, or a hate crime, as defined in Title 11.6 (commencing with Section 422.6) of Part 1, has occurred and the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court. A continuance under this paragraph shall be limited to a maximum of 10 additional court days.~~

~~(3) Only one continuance per case may be granted to the people under this subdivision for cases involving stalking, hate crimes, or cases handled under the Career Criminal Prosecution Program. Any continuance granted to the people in a case involving stalking or handled under the Career Criminal Prosecution Program shall be for the shortest time possible, not to exceed 10 court days.~~

~~(h) Upon a showing that the attorney of record at the time of the defendant’s first appearance in the superior court on an indictment or information is a Member of the Legislature of this state and that the Legislature is in session or that a legislative interim committee of which the attorney is a duly appointed member is meeting or is to meet within the next seven days, the defendant shall be entitled to a reasonable continuance not to exceed 30 days.~~

~~(i) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever any continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes.~~

1 ~~(j) Whenever it shall appear that any court may be required,~~
2 ~~because of the condition of its calendar, to dismiss an action~~
3 ~~pursuant to Section 1382, the court must immediately notify the~~
4 ~~Chair of the Judicial Council.~~

5 ~~(k) This section shall not apply when the preliminary~~
6 ~~examination is set on a date less than 10 court days from the date~~
7 ~~of the defendant's arraignment on the complaint, and the~~
8 ~~prosecution or the defendant moves to continue the preliminary~~
9 ~~examination to a date not more than 10 court days from the date~~
10 ~~of the defendant's arraignment on the complaint.~~

11 ~~(l) This section is directory only and does not mandate dismissal~~
12 ~~of an action by its terms.~~